IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

OP.No. 3768 of 2003(W)

PETITIONER:

COCHIN PORT LABOUR UNION (CITU)
REG.NO. 287/69, WILLINGTON ISLAND, COCHIN-682009,
REPRESENTED BY ITS GENERAL SECRETARY B.HAMSA.

BY ADV. SRI.MATHEW ZACHARIAH
SRI.KOSHY GEORGE

RESPONDENTS:
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1. **DISTRICT LABOUR OFFICER (KERALA HEAD LOAD WORKERS), KAKKANAD, ERNAKULAM.**

2. **REGIONAL JOINT LABOUR COMMISSIONER, ERNAKULAM.**

3. **A.A.ISMAILKUTTY S/O. AHAMMED, ARACKAL HOUSE, THANGAL NAGAR, PALLURUTHY, KOCHI-6.**

4. **COCHIN PORT TRUST,REPRESENTED BY ITS CHAIRMAN, KOCHI.**

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN
SRI.K.G.SARATHKUMAR
GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/03/2007, ALONG WITH OP NO. 5378 OF 2002 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.6668/2003 IN OP. NO.3768/2003

DISMISSED

13.03.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER UNION.

EXT.P2:- COPY OF THE ORDER NO.H-5458/01 DT.17.1.02.

EXT.P3:- COPY OF THE APPEAL SUBMITTED BY THE PETITIONER CHALLENGING EXT.P2 ORDER.

EXT.P4:- COPY OF THE APPELLATE ORDER DT.4.5.02.

EXT.P5:- COPY OF THE SETTLEMENT DT.13.7.2001.

EXT.P6 & P6(a):- COPY OF THE LETTER DT.21.11.02 AND THE POSTAL ACKNOWLEDGMENT CARD.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P.NO.3768/03 &
O.P.NO.5378 OF 2002

DATED THIS THE 13th DAY OF MARCH, 2007

JUDGMENT

In O.P.No.5378/02 the petitioner, who is the 3rd respondent in O.P.No.3768/03 seeks implementation of the order of the original authority and appellate authority under the Headload Workers Act which are challenged by the petitioner in O.P.No.3768/03. In the above circumstances, I shall first deal with O.P.No.3768/03. Exts.P2 and P4 orders are under challenge in this original petition. Ext.P2 is the order of the District Labour Officer in exercise of his powers under Section 21 of the Kerala Headload Workers Act and Ext.P4 is the order in appeal against Ext.P2.

2. The 3rd respondent was originally a member of the petitioner Union namely Cochin Port Labour Union (CITU). He was so a member of the Union from 1984 to 1997. He claimed that with the permission of the Union he went to Gulf in search of a job with the understanding that his brother, Sri. Karim would do the work of the 3rd respondent and when he comes back from Gulf he would replace his brother Sri. Karim. Since he could not get the desired job in Gulf, he

came back from Gulf in May 2000 and requested the Union to give him work as per the earlier understanding. The Union having rejected his claim, the 3rd respondent raised a dispute, which could not be resolved by conciliation and therefore the matter was taken up for adjudication by the District Labour Officer. The District Labour Officer came to the conclusion that although the petitioner Union is not the employer of the 3rd respondent, since for the purpose of employing the workers in the Port area for loading and unloading cement, the union has prepared list of workers to be deployed for such work, they have the power to include persons in the list of workers to be so deployed and to deny work to them. In the above circumstances, the District Labour Officer came to the conclusion that the petitioner Union's contention that the 3rd respondent is not a headload worker as defined under Section 2(m) is irrelevant and what is relevant is whether till 1997 July, the 3rd respondent was in fact engaged in the work of loading and unloading in the Port area. On a finding that he was the District Labour Officer directed the petitioner Union to include the name of the 3rd respondent in the list of workers and to see that the 3rd respondent is given work in his turn. The petitioner Union challenged the same before the Appellate Authority (Regional Joint Labour Commissioner), which was dismissed by the Appellate Authority.

3. On a consideration of Exts.P2 and P4, I am of opinion

that the District Labor Officer and the Appellate Authority have given some statutory recognition to a Workers' Union as an employer under the Headload workers Act which by no stretch of imagination can be countenanced. The Headloard Workers Act, Rules and Scheme does not contemplate grant of headload work through a Union. What is contemplated under the Act, Rules and Scheme is a registration for a headloard worker and on getting registration the worker is entitled to work in the area to which the scheme applies. The employer of the persons having such registration is deemed to be the committee appointed by the Government under Section 18 of the Act. No Union of Workers has any role contemplated under the Act, Rules and Scheme. For that reason I am of opinion that Exts.P2 and P4 orders are without jurisdiction in so far as only a dispute regarding employment or unemployment or the terms of employment or conditions of work of any headload worker can be settled by recourse to Section 21. That essentially means that the dispute should be between entities recognised under the Headload Workers Act. In so far as the Act, Rules and Scheme especially Section 21 does not contemplate a dispute between headload worker on the one hand and a Union on the other hand especially regarding employment or unemployment of that headlaod worker, the authorities under Section 21 could not have taken up on themselves the task of settling the alleged dispute. According to me, there was no dispute at all as

contemplated under the Act which could have been settled by the authorities by recourse to Section 21 of the Act.

4. Learned counsel for the Cochin Port Trust submits that at the relevant time the scheme was not notified in the Cochin Port Trust area but now it is. Now that the scheme is applicable to that area since the question is again likely to arise, I am not inclined to dispose of this original petition on the basis that at the relevant time the Cochin Port Trust was not a notified area under the scheme .

5. In the above circumstances, I quash Exts.P2 and P4. I make it clear that if the 3rd respondent is a registered headload worker entitled to work in the area, he may approach the committee appointed under Section 18 of the Act, who shall see that the petitioner gets work, if he is entitled to notwithstanding the fact that the petitioner Union is not amenable to granting work to the 3rd respondent.

In view of the fact that I have quashed Exts.P2 and P4 orders in O.P.No.3768/03,O.P.No.5378/02, which has been filed to implement Exts.P2 and P4 orders in O.P.No.3768/03, does not survive and it is closed as infructuous.

S. SIRI JAGAN, JUDGE

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